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Brown Raysman Millstein Felder & Steiner 900 Third Avenue New York, NY 10022-4728			NGUYEN, THUONG	
			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

09/763,338

Applicant(s)

SIM ET AL.

Examiner

Thuong (Tina) T. Nguyen

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6,8-19,21,22,24-31,33-35 and 49-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,8-11,21,22,24,31,33-35 and 49-52 is/are rejected.
- 7) ☒ Claim(s) 12-16 and 25-30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is responsive to the amendment filed on 5/21/07. Claims 1, 4-5, 8, 17-18, 24 were amended. Claims 3, 7, 20, 23, 32, 36-48 are canceled. Claims 1, 2, 4-6, 8-19, 21-22, 24-31, 33-35, & 49-52 are pending and represent method and system for network resource monitoring and measurement system and method.

### **Claim Rejections - 35 USC § 112**

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 17 & 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It's unclear to the examiner what value was being calibrating? For what purpose?

4. Claim 49 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It's unclear to the examiner what is "an insertion server linking" means? Does it mean "an insertion server" is one object? That server was being able to link all the resources together? It's still unclear how it's being done and how it's measuring code is inserted into monitor resource? According to my understanding, monitor resources are the sample group or user being monitor. Then how was it done? What code being inserted?

**Claim Rejections - 35 USC § 102**

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 49-52 are rejected under 35 U.S.C. 102(e) as being anticipated by over Lu Patent No.2003/0110485 A1. Lu teaches the invention as claimed including interactive service device metering systems (see abstract).

7. As to claim 49, Lu teaches a system for measuring and analyzing multiple data sources comprising:

a plurality of resources servers (figure 3; page 3, paragraph 41-43; Lu discloses that the system of acquiring, collecting usage data of an off-lines activities); and

an insertion server linking each resource server of said plurality of resource servers to said communications network, such that when a request for a monitored resource from a resource server of said plurality of resource servers is made, measurement code is inserted into said monitored resource by said insertion server for purposes of measuring and analyzing usage of the monitored resource (page 3, paragraph 41-43; Lu discloses that the system of acquiring, collecting usage data of an on-line and off-line activities).

8. As to claim 50, Lu teaches the method as recited in claim 1, wherein the communications network comprises the Internet (figure 9 & 17; page 3, paragraph 42; Lu discloses that the method of including the Internet in the system).

9. As to claim 51, Lu teaches the method as recited in claim 1, wherein an insertion server means is used to insert measurement code into each resource requested by a user (figure 11 & 5; Lu discloses that the method of including sniff ID codes and Log ID codes in the system).

10. As to claim 52, Lu teaches the system as recited in claim 18, wherein said reporting means included in said data collection and processing means (page 3, paragraph 41-43; Lu discloses that the method of gathering, metering and acquiring on-line and off-lines usage data).

### **Claim Rejections - 35 USC § 103**

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1, 2, 4-6, 8-19, 21-22, 24-31, 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu Patent No.2003/0110485 A1 in view of Malik, Patent No. 6,842,782 B1.

Lu teaches the invention as claimed including interactive service device metering systems (see abstract).

13. As to claim 1, Lu teaches a method of measuring and analysis multiple data sources comprising steps of:

obtaining a data source for a first group of one or more monitored resources, said first group being linked to said communications network (page 3, paragraph 41-43; Lu discloses that the method of acquiring, collecting usage data of an on-line activities);

obtaining a further data source for a second group of one or more monitored resources, each of said second group and said first group linked to said communications network (page 3, paragraph 41-43; Lu discloses that the method of acquiring, collecting usage data of an off-lines activities), when said further data source is obtained with respect to a group of monitored users, initially forming a first group of monitored users as a sample group so as to record and measure interactions of users in the sample group (page 8, paragraph 87; Lu discloses that the method of determined which portions of the delivered content are being displayed to the end user and the on-line services against off-line services); and

combining said data source and said further data source to form a single data source available to interested parties so as to ascertain usage information on one or more resources (page 4, paragraph 49-50 & 52-53; Lu discloses that the method of

generating a report for extent of usage of various on-line and off-line services of the accumulating and metering information of the usage data).

But Lu failed to teach the claim limitation wherein processing the data source and the further data source, wherein the processing of the further data source is in relation to the interactions of the users in the sample group; and calibrating a value based on said data source and said further data source.

However, Malik teaches method and apparatus for tracking functional states of a web-site and reporting results to web developers. Malik teaches the limitation wherein processing the data source and the further data source, wherein the processing of the further data source is in relation to the interactions of the users in the sample group (col 24, lines 48 – col 25, lines 25); and calibrating a value based on said data source and said further data source (col 26, lines 28-34; col 26, lines 63 – col 27, lines 28).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lu in view of Malik so that the system would track the web sites activities, calculating error rates and reporting the status information for the activities. One would be motivated to do so to tracking the activities for both on-line and off-lines activities.

14. As to claim 2, Lu teaches the method as recited in claim 1, wherein said combining step comprises at least one substep selected from the group consisting of displaying said single data source, aggregating said simple data source, transforming said single data source, calibrating said single source, and formatting said single data source, and wherein said combining step is accomplished via a reporting server means

through said communications network (page 7, paragraph 76; Lu discloses that the method of generating usage reports based upon the usage data acquired by the listener and metering systems).

15. As to claim 4, Lu teaches the method as recited in claim 1, wherein the interactions of the users in the sample group are entered by the users in the sample group through a user interface means (page 3, paragraph 44; Lu discloses that the method of verified users information upon each end user logon).

16. As to claim 5, Lu teaches the method as recited in claim 1, wherein the further data source is based on said interactions in relation to one or more resources (page 4, paragraph 53; Lu discloses that the method of acquiring on-line and off-line usage data so that the system could produce the ratings data for it).

17. As to claim 6, Lu teaches the method as recited in claim 1, comprising the step of processing said data source and said further data source (page 4, paragraph 55; Lu discloses that the method of indicating the access of an on-lines services by monitoring off-line and on-line service and delivered the content requested by the user).

18. As to claim 8, Lu teaches the method as recited in claim 1. But Lu failed to teach the claim limitation wherein said calibrating comprises calculating an error rate.

However, Malik teaches the limitation wherein said calibrating comprises calculating an error rate (col 26, lines 28-34; col 26, lines 63 – col 27, lines 28).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lu in view of Malik so that the system would generated a failure report, which list all the points and cause of failure of an executed routine. One would



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be motivated to do so to have a better understanding of the cause of the errors and the approximately errors rate.

19. As to claim 9, Lu teaches the method as recited in claim 8. But Lu failed to teach the claim limitation wherein the further data source is based on interactions in relation to one or more unmonitored resources, and further comprising the step of applying the error rate to the further data source so as to determine an estimate of equivalent interactions of total users with respect to the one or more unmonitored resources.

However, Malik teaches the limitation wherein the further data source is based on interactions in relation to one or more unmonitored resources, and further comprising the step of applying the error rate to the further data source so as to determine an estimate of equivalent interactions of total users with respect to the one or more unmonitored resources (col 25, lines 27 – col 26, lines 2).

20. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lu in view of Malik so that obtaining the usage resources and specialized reporting modules. One would be motivated to do so to be able to have a customize report system which would display information requested from the clients.

21. As to claim 10, Lu teaches the method as recited in claim 1, wherein the step of obtaining said data source comprising using measurement code means from said first group to obtain measurements of interactions of all users of said first group of one or more monitored resources (figure 11).

22. As to claim 11, Lu teaches the method as recited in claim 1, wherein the step of obtaining said further data source comprises using measurement code means

forwarded to the user interface means of the users in said sample group so as to record all interactions of each user in the sample group (figure 11 & 5; Lu discloses that the method of including sniff ID codes and Log ID codes in the system).

23. As to claim 17, Lu teaches a system for measuring and analyzing multiplying data sources comprising:

a first group of one or more monitored resources, comprising resource servers (page 3, paragraph 41-43; Lu discloses that the method of acquiring, collecting usage data of an on-line activities);

a second group of one or more monitored resources, comprising resource servers (page 3, paragraph 41-43; Lu discloses that the method of acquiring, collecting usage data of an off-lines activities);

a data collection and processing means for receiving a data source for said first group of one or more monitored resources, and for receiving a further data source for said second group of one or more monitored resources (figure 1 & 2; page 11, paragraph 115-120; Lu discloses that the method of collecting, metering and monitoring user activities both on-line and off-line), wherein the further data source and the data source collected by a collection server means are processed by a processing server means in the data collection and processing means to calibrate a value based on the data source and further data source; and

reporting means for displaying said data source and said further data source as a combined data source to interested parties so as to ascertain usage information on one or more resources (page 4, paragraph 49-50 & 52-53; Lu discloses that the method of

generating a report for extent of usage of various on-line and off-line services of the accumulating and metering information of the usage data).

But Lu failed to teach the claim limitation wherein the further data source and the data source collected by a collection server means are processed by a processing server means in the data collection and processing means to calibrate a value based on the data source and further data source.

However, Malik teaches the limitation wherein the further data source and the data source collected by a collection server means are processed by a processing server means in the data collection and processing means to calibrate a value based on the data source and further data source (col 26, lines 28-34; col 26, lines 63 – col 27, lines 28).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lu in view of Malik so that the system would track the web sites activities, calculating error rates and reporting the status information for the activities. One would be motivated to do so to tracking the activities for both on-line and off-lines activities.

24. As to claim 18, Lu teaches a system for measuring and analyzing multiple data sources comprising:

a first group of one or more monitored resources, comprising resources servers (page 3, paragraph 41-43; Lu discloses that the system of acquiring, collecting usage data of an on-line activities);

a second group of one or more monitored users (page 3, paragraph 41-43; Lu discloses that the system of acquiring, collecting usage data of an off-lines activities);

a data collection and processing means for receiving a data source for said first group of one or more monitored resources, and for receiving a further data source for said second group of one or more monitored users (figure 1 & 2; page 11, paragraph 115-120; Lu discloses that the system of collecting, metering and monitoring user activities both on-line and off-line), wherein the further data source and the data source collected by a collection server means are processed by a processing server means in the data collection and processing means to calibrate a value based on the data source and further data source; and

reporting means for displaying said data source and said further data source as a combined data source to interested parties so as to ascertain usage information on one or more resources (page 4, paragraph 49-50 & 52-53; Lu discloses that the system of generating a report for extent of usage of various on-line and off-line services of the accumulating and metering information of the usage data).

But Lu failed to teach the claim limitation wherein the further data source and the data source collected by a collection server means are processed by a processing server means in the data collection and processing means to calibrate a value based on the data source and further data source.

However, Malik teaches the limitation wherein the further data source and the data source collected by a collection server means are processed by a processing server means in the data collection and processing means to calibrate a value based on

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the data source and further data source (col 26, lines 28-34; col 26, lines 63 – col 27, lines 28).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lu in view of Malik so that the system would track the web sites activities, calculating error rates and reporting the status information for the activities. One would be motivated to do so to tracking the activities for both on-line and off-lines activities.

25. As to claim 19, Lu teaches the system as recited in claim 17, wherein said reporting means is a reporting server means included in said data collection and processing means (page 7, paragraph 76; Lu discloses that the system of generating usage reports based upon the usage data acquired by the listener and metering systems).

26. As to claim 21, Lu teaches the system as recited in claim 18, wherein said data collection and processing means includes collection server means for collecting said data source and said further data source and further includes processing means for processing the data source and the further data source collected by the collection server means (figure 1 & 2; page 11, paragraph 115-120; Lu discloses that the system of collecting, metering and monitoring user activities both on-line and off-line).

27. As to claim 22, Lu teaches the system as recited in claim 21, wherein the further data source is based on interactions from said monitored users of said second group in relation to one or more resources (page 4, paragraph 53; Lu discloses that the system

of acquiring on-line and off-line usage data so that the system could produce the ratings data for it).

28. As to claim 24, Lu teaches the system as recited in claim 22. But Lu failed to teach the claim limitation wherein the further data source is based on interactions from said monitored users in relation to one or more unmonitored resources, and wherein the value is an error rate which is subsequently applied to the further data source so as to determined an estimate of equivalent interactions of total users with respect to the one or more unmonitored resources.

However, Malik teaches the limitation wherein the further data source is based on interactions from said monitored users in relation to one or more unmonitored resources, and wherein the value is an error rate which is subsequently applied to the further data source so as to determined an estimate of equivalent interactions of total users with respect to the one or more unmonitored resources (col 25, lines 27 – col 26, lines 2).

29. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lu in view of Malik so that obtaining the usage resources and specialized reporting modules. One would be motivated to do so to be able to have a customize report system which would display information requested from the clients.

30. As to claim 31, Lu teaches the system as recited in claim 17, wherein said communications network is the Internet (figure 9 & 17; page 3, paragraph 42; Lu discloses that the system of including the Internet in the system).

31. As to claim 33, Lu teaches the system as recited in claim 21. But Lu failed to teach the claim limitation wherein all request for resources from the monitored users is done through a proxy server.

However, Malik teaches the limitation wherein all request for resources from the monitored users is done through a proxy server (col 6, lines 39-50; col 24, lines 48 - col 25, lines 25).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lu in view of Malik so that the system would include gateway and proxy server in the system. One would be motivated to do so to increase the security for the system.

32. As to claim 34, Lu teaches the system as recited in claim 33, wherein measurement code is inserted by said proxy server into one or more requested resources and then forwarded with the one or more requested resources to a respective monitored user (figure 11).

33. As to claim 35, Lu teaches the system as recited in claim 34. But Lu failed to teach the claim limitation wherein the proxy server is part of the data collection and processing means.

However, Malik teaches the limitation wherein the proxy server is part of the data collection and processing means (col 6, lines 39-50; col 24, lines 48 - col 25, lines 25).

34. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lu in view of Malik so that the system would include gateway and

proxy server in the system. One would be motivated to do so to increase the security for the system.

***Allowable Subject Matter***

35. Claims 12-16, 23-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

36. The following is an examiner's statement of reasons for objected the claims for allowance:

In interpreting the claims, in light of the specification filed on 9/5/03, the Examiner finds the claimed invention to be patentably distinct from the prior art of record.

37. Lu et al. (US 2003/0110485), teach Interactive service device metering systems wherein obtaining a data source for an on-line activities and an off-line activities and generated the report of the usages resources (abstract; page 3, paragraph 41-43).

38. Malik et al. (US 6,842,782 B1), teach method and apparatus for tracking functional states of web-site and reporting results to web developers, wherein monitoring, and gathering statistics by a proxy server and generated specialized report for particular needs from the clients (abstract; col 24, lines 48 – col 25, lines 25).

39. The following is an examiner's statement of reasons for allowance.



The examiner has found that the prior art of record does not appear to teach or suggest or render obvious the claimed limitations in combination with the specific added limitations as recited in dependent claims. The prior art of record fails to teach or suggest individually or in combination of calculating a weighting factor based on a number of users in said sample group and a total number of users expected to have access to resources, and calculating the error rate by dividing a number of actual interactions in data sources of the combined groups. Claims 12-16 and 25-30 are object to be allowed because of the combination of other limitations and the limitation listed above.

***Response to Arguments***

Applicant's arguments with respect to claims 1, 17-18 have been considered but are moot in view of the new ground(s) of rejection.

***Response to Arguments***

Applicant's arguments filed 5/21/07 have been fully considered but they are not persuasive. In response to Applicant's argument, the Patent Office maintains the rejection. In the remarks, the applicant argues in substance that; A) Lu does not disclose an insertion server that seeks to link the various resource servers; B) Lu and Malik failed to teach or suggest calibrating a value based on said data source and said further data source.

In response to A); Applicants argue that Lu does not teach an insertion server that seeks to link the various resource servers. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., an insertion server that seeks to link the various resource servers) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In response to Applicant's argument, the Patent Office maintains the rejection because Lu does teach an insertion server linking each resource server of said plurality of resource servers to said communication network, such that when a request for monitor resource from resource server of said plurality of resource servers is made, measurement code is inserted into said monitored resource by said insertion server for purpose of measuring and analyzing usage of the monitored resource (page 3, paragraph 41-43; page 4, paragraph 49-50; page 5, paragraph 63; Lu discloses that the system of acquiring, collecting usage data of an on-line and off-line activities). Moreover, Lu discloses the method of monitor the usage of the monitored resource as requested. Therefor, Lu meets the claim limitation.

In response to B); Applicants argue that Lu and Malik do not teach calibrating a value based on said data source and said further data source. In response to Applicant's argument, the Patent Office maintains the rejection because Lu and Malik do teach calibrating a value based on said data source and said further data source (col 26, lines 28-34; col 26, lines 63 – col 27, lines 28; Malik discloses that the method of

calculating an error based on the parameter collected by the system). Therefore, Malik meets the claim limitation.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

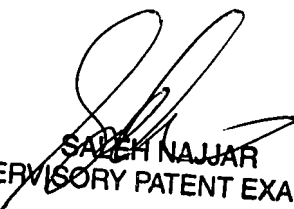
#### **Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuong (Tina) Nguyen whose telephone number is 571-272-3864, and the fax number is 571-273-3864. The examiner can normally be reached on 8:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thuong (Tina) Nguyen  
Patent Examiner/Art Unit 2155



SALEH NAJJAR  
SUPERVISORY PATENT EXAMINER